

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 302 of) CS Docket No. 96-46
the Telecommunications Act of 1996)
)
Open Video Systems)

To: The Commission

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**Opposition
To
Petition For Reconsideration And Clarification**

BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Interactive Media Services, Inc., ("BellSouth") submit this Opposition to the Cable Television Association of Georgia's ("CTAG") *Petition For Reconsideration And Clarification of the First Order On Reconsideration*¹ filed on August 7, 1996 ("Petition").

CTAG and other representatives of incumbent cable operators used every opportunity to prevent or delay BellSouth's video dialtone trial. Incredibly, CTAG now urges the Commission to force BellSouth to proceed with that trial. CTAG understands that video dialtone is dead, but also understands that the Commission can hamper BellSouth's competitive entry by reviving video dialtone's corpse -- even if only temporarily.

¹ *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, CS Docket No. 96-46, First Order on Reconsideration, FCC 96-312 (released July 23, 1996) ("*Transition Order*").

To achieve this objective, CTAG falsely accuses BellSouth of numerous misdeeds in connection with BellSouth's video dialtone trial and its transition to franchised cable service. CTAG falsely accuses BellSouth of violating its video dialtone authorization² in several respects. CTAG liberally misrepresents both the requirements of that order and BellSouth's actions. Moreover, CTAG disregards the effect of the Telecommunications Act of 1996³ and artfully misstates its provisions.

I. BellSouth Did Not Violate Its Video Dialtone Authorization.

BellSouth did not, as charged by CTAG, violate the requirements of its video dialtone authorization. Moreover, the 1996 Act terminated the Commission's video dialtone rules and eliminated any requirement for Section 214 authorization to establish or operate a system for the delivery of video programming.⁴ The 1996 Act thereby made all video dialtone authorizations unnecessary and nullified their requirements. CTAG would have the Commission disregard the 1996 Act's elimination of the video dialtone rules and the Section 214 requirement.

² *BellSouth Telecommunications, Inc.*, DA 95-181, 11 FCC Rcd 4404 (Com. Car. Bur. 1995) ("*Authorization*").

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, enacted Feb. 8, 1996 ("1996 Act").

⁴ 1996 Act, Sections 651(c) and 302(c)(3).

CTAG's allegations that BellSouth has violated certain conditions of the *Authorization* serve only to cloud the record with irrelevant matters. Nonetheless, BellSouth cannot ignore CTAG's allegations.

CTAG charges that certain of BellSouth's accounting reports for video dialtone were "late and incomplete."⁵ CTAG offers no support for its charge that the reports were late or incomplete. Moreover, CTAG disregards the order that established the due dates for those reports⁶ and filing delays that resulted from the government shutdown and weather emergency during December 1995 and January 1996.⁷ BellSouth filed its video dialtone accounting reports for the first, second, and third quarters of 1995 in full compliance with the Staff's directives.

CTAG also charges that BellSouth violated the *Authorization* by failing to file some reports entirely.⁸ As to the reports for the fourth quarter of 1995 and the first quarter of 1996, the 1996 Act terminated the Commission's video dialtone rules before those reports were due. As to the filing of promotional materials, the Commission never prescribed a due date, and the 1996 Act has now

⁵ Petition at 10.

⁶ *Reporting Requirements on Video Dialtone and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Services*, 10 FCC Rcd 11292, ¶48 (Com. Car. Bur., Sept. 29, 1995) (reports being held pending adoption of reporting requirements due "on the last day of the calendar quarter following the quarter in which this Order is adopted").

⁷ *Procedures For The Filing Of Documents That Were Due During The Government Shutdown Or During The Weather Emergency*, Public Notice, DA 96-2 (Jan. 11, 1996) (delayed filings due Jan. 16, 1996).

⁸ Petition at 10.

terminated this requirement along with the other video dialtone rules. Finally, as to the filing of six-month reports regarding operation of and demand for the system, the *Authorization* required that such reports be filed “at six month intervals during the trial.”⁹ BellSouth’s video dialtone trial never began in Chamblee, where BellSouth now operates under a cable franchise. Also, BellSouth has not begun, and may never begin, a video dialtone trial in the remainder of the trial area, where BellSouth’s application for a cable franchise is pending. BellSouth cannot have violated a requirement that applies “during” a trial that has not begun.

II. BellSouth Did Not Improperly Terminate Video Dialtone Service.

CTAG further alleges that BellSouth is violating the *Authorization* by not conducting the video dialtone trial for 18 months. CTAG misconstrues the nature of the *Authorization*. The *Authorization* permitted, but did not require, BellSouth to conduct a video dialtone trial. It permitted, but did not require, that the trial be conducted for 18 months. It is, moreover, patently absurd for CTAG to suggest that BellSouth be required to proceed with a video trial under a regulatory regime that no longer exists.

CTAG feigns an interest in the “profound effect” of BellSouth’s not going forward with a video dialtone trial on programmer-customers.¹⁰ CTAG does not explain how a trial conducted under the discredited video dialtone model could

⁹ *Authorization*, ¶52(k).

¹⁰ Petition at 4.

interest programmers. Indeed, the only programmer with an interest is Scripps Howard, which has not itself petitioned for reconsideration of the *Transition Order*. The Commission would serve only the competitive interests of Scripps Howard, who is also the incumbent cable operator in the trial area, by forcing BellSouth and other programmers to waste 18 additional months on a bankrupt regulatory model.¹¹ No other video dialtone programmer has stated any interest in the perpetuation of video dialtone or BellSouth's trial.

Also, CTAG accuses BellSouth of violating Section 214 by not obtaining authorization to terminate the video dialtone trial. Section 214(a) requires a carrier to obtain a certificate from the Commission prior to discontinuing, reducing, or impairing service to a community. Assuming, for the sake of argument, that this requirement applies to the withdrawal of video dialtone service, it would not apply in this case. First, the Commission authorized BellSouth to conduct only a temporary trial of video dialtone. It is preposterous to suggest that the withdrawal of a temporary trial service requires a Section 214 certificate. Second, BellSouth does not need a Section 214 certificate to withdraw a service it has never offered. BellSouth notified the Commission of its intent to conduct a video dialtone market trial,¹² but never began the trial. BellSouth made its video dial-

¹¹ CTAG makes much ado about BellSouth's "affidavit evidence" of the need for a trial of at least 18 months. Petition at 5 and n.22. BellSouth stands by that affidavit, but cannot understand how the futile continuation of a trial based on a defunct regulatory model can serve any useful purpose.

¹² *In the Matter of BellSouth's Computer III Market Trial Notification*, CC Docket No. 88-616 (filed Oct. 2, 1995).

tone system available for testing by programmers in anticipation of commencing the trial, as required by the *Computer Inquiry III* rules.¹³ Neither BellSouth nor any other programmer ever made service over that video dialtone system available to subscribers. Accordingly, BellSouth never informed the Commission of an "official start date" for any phase of the trial.¹⁴ Moreover, BellSouth never filed a tariff for video dialtone service and never provided video dialtone service to any programmer. Therefore, BellSouth's decision not to commence its video dialtone market trial in the Chamblee portion of the trial area did not constitute a withdrawal of service, and no Section 214 certificate was required.

III. BellSouth Has Not Shifted Video Dialtone Or Cable Service Costs To Telephone Service.

More outrageous than CTAG's trivial arguments for requiring BellSouth to proceed with a video dialtone trial are its false representations and speculative allegations regarding BellSouth's conduct of its franchised cable services trial in Chamblee, Georgia. CTAG alleges that BellSouth is cross-subsidizing its cable services by "offering to customers that are willing to commit to subscribing to BellSouth's cable service for one, two, or three years, \$.50 per month discounts off their cable bill" for purchasing other BellSouth services, viz., "local telephone service," "Enhanced Calling features," mobile services, and "BellSouth long dis-

¹³ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 FCC 2d 958, ¶163 (1986).

¹⁴ See *Authorization*, ¶51.

tance and internet access services.”¹⁵ CTAG also alleges that BellSouth is attempting to “lock-in customers for a service they [sic] are not yet authorized to provide.”¹⁶ CTAG bases these allegations on its Exhibit 9, which it characterizes as a “BellSouth marketing document.”¹⁷

CTAG’s representations are false and reckless. The first page of Exhibit 9 is a BellSouth document, but it does not describe a marketing offer that BellSouth has made in its cable services trial or in any other context.¹⁸ Rather, it is a document used by a marketing research firm in consumer focus groups conducted on behalf of BellSouth.¹⁹ The document described a hypothetical offer to evaluate consumers’ reactions.

BellSouth does not know how CTAG came into possession of Exhibit 9. Focus group participants were asked to return the document at the end of the

¹⁵ Petition at 15.

¹⁶ Petition at 15.

¹⁷ Petition at n.29. More recently, Scripps Howard Cable TV Company attached this same document as Exhibit 2 to Reply Comments filed on August 19, 1996, in CS Docket No. 96-133, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*. Not surprisingly, Scripps Howard also misrepresented the nature of this document. See Scripps Howard Reply Comments at 4-5.

¹⁸ That hypothetical offer does not contain any impermissible elements, however. Discounts on cable service in return for purchasing telephone services are entirely consistent with the bundling safeguards established in the open video systems docket. See *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, CS Docket No. 96-46, Third Report And Order And Second Order On Reconsideration, FCC 96-334 (released Aug. 8, 1996), ¶¶215 *et seq.*

¹⁹ See attached Declaration of Jeffrey L. Smith, Vice President-Marketing, BellSouth Interactive Media Services, Inc.

session. In any event, it should have been obvious from the last two pages of Exhibit 9 that the first page represented something other than an actual offer to customers. The second and third pages of Exhibit 9 constitute a form used by the firm that provided the location for BellSouth's focus groups and is obviously a market research tool. The top of the second page refers explicitly to "focus groups." CTAG's charges based on Exhibit 9 are not only false, but also are irresponsible and reckless. In any event, such an offer, if made, would not involve cross-subsidization. The discount would be applied entirely to cable services and would not be charged to regulated telephone operations.

In addition to the foregoing, CTAG cites an actual BellSouth marketing program to support speculative allegations that BellSouth has engaged in "a classic example of cross-subsidization of a competitive service with monopoly assets."²⁰ Unlike CTAG's Exhibit 9, its Exhibit 8 is a copy of a letter describing a real offer to BellSouth's customers. That offer did not, as CTAG charges, represent any cross-subsidization. The offer contained two elements:

(1) *Tariffed Caller ID Name and Number Service*. This element consisted of free service for one month and was available to all of BellSouth's residential telephone customers in Georgia between June 1 and July 31, 1996, under procedures established by the Georgia Public Service Commission.

²⁰ Petition at 14-15.

(2) *Nontariffed Caller ID Name and Number Equipment*. This element consisted of free equipment and free installation of the equipment. It was available only to BellSouth's cable service customers. This element was funded entirely by BellSouth Interactive Media Services, Inc., and was not charged to telephone company accounts.²¹

There is no basis for CTAG's speculative allegations of cross-subsidization.

Furthermore, there is no need for additional accounting requirements to track the costs of video dialtone systems as they are converted to cable systems or OVS. When BellSouth received a cable franchise from the City of Chamblee, BellSouth Telecommunications reclassified all directly assignable investment related to video services in the entire video dialtone trial area to nonregulated accounts in accordance with its Cost Allocation Manual and Part 64 of the Commission's Rules. Also, in anticipation of receiving cable franchises during 1996, BellSouth prepared its FCC Report 495A, Forecast of Nonregulated Usage Report, to include the provision of non-common carrier cable services in the trial area.

IV. Conclusion

Of all the frivolous pleadings filed by CTAG and other members of the cable industry in their incessant efforts to preserve their dominance in local video programming markets by manipulation of regulatory procedures, CTAG's Petition

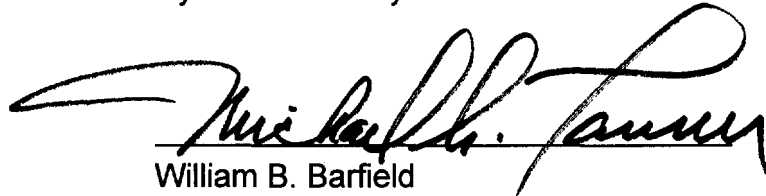
²¹ See Declaration of Jeffrey L. Smith.

is the most disgraceful. It argues ludicrous positions founded solely on speculation and reckless misrepresentation. Pursuant to Section 1.52, 47 C.F.R. §1.52, the Commission should strike CTAG's Petition. It would thereby send an unambiguous signal to the cable industry that it will no longer tolerate such attempts to thwart or delay competitive entry by abuse of the Commission's procedures.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
and
BELLSOUTH INTERACTIVE MEDIA
SERVICES, INC.

By Their Attorneys:

A handwritten signature in dark ink, appearing to read "Michael A. Tanner", is written over a horizontal line.

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September 11, 1996

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
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Implementation of Section 302 of)	CS Docket No. 96-46
the Telecommunications Act of 1996)	
)	
Open Video Systems)	

To: The Commission

Declaration of Jeffrey L. Smith

I, Jeffrey L. Smith, am Vice President--Marketing for BellSouth Interactive Media Services, Inc. ("BIMS"). BIMS is a subsidiary of BellSouth Corporation engaged in the provision of cable television services in areas in which BIMS has obtained a cable franchise, including the City of Chamblee, Georgia. I am responsible for marketing planning and market research. I am submitting this declaration to respond to various allegations made by the Cable Television Association of Georgia ("CTAG") in its *Petition For Reconsideration And Clarification of the First Order On Reconsideration*¹ filed on August 7, 1996 ("Petition").

The first page of Exhibit 9 to the Petition is a BellSouth document, but it does not describe a marketing offer that BellSouth has made in its cable services trial or in any other context. It is a document used by a marketing research firm in consumer focus groups conducted on behalf of BellSouth. The document described a hypothetical offer to evaluate consumers' reactions. The concept described in the first page of Exhibit 9 was tested in two focus groups held on July 24, 1996.

I do not know how CTAG came into possession of Exhibit 9. Focus group participants were asked to return the document at the end of the session. The second and third pages of Exhibit 9 constitute a form used by the firm that provided the location for BellSouth's focus groups. If BIMS were to make such an offer to its subscribers, any discount would be applied entirely to cable services and would not be charged to regulated telephone operations.

CTAG's Exhibit 8 is a copy of a letter describing a real offer to BellSouth's customers. The offer contained two elements:

¹ *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, CS Docket No. 96-46, First Order on Reconsideration, FCC 96-312 (released July 23, 1996).

(1) *Tariffed Caller ID Name and Number Service.* This element consisted of free service for one month and was a promotional offer available to all of BellSouth's residential telephone customers in Georgia between June 1 and July 31, 1996, under procedures established by the Georgia Public Service Commission. See Attachment, which is BellSouth's notification to the Georgia Public Service Commission regarding that promotion.

(2) *Nontariffed Caller ID Name and Number Equipment.* This element consisted of free equipment and free installation of the equipment. It was available only to BellSouth's cable service customers. This element was funded entirely by BIMS and was not charged to telephone company accounts.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on Tuesday, September 10, 1996.



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DOCKET# N/D
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MAY 2 1996

Executive Secretary
Ga. Public Service Commission

Mrs. Terri M. Lyndall
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Georgia Public Service Commission
244 Washington Street, S.W.
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Dear Ms. Lyndall:

In accordance with the Special Promotions Tariff in A2.10 of the General Subscriber Service Tariff, the Company proposes a promotion of Caller ID-Deluxe and Call Waiting Deluxe features.

This promotion is planned beginning June 1, 1996, and ending July 31, 1996. During this time, when a residence subscriber orders Caller ID-Deluxe and/or Call Waiting Deluxe, the first month's billing will be at no charge.

Commission consideration and approval of this promotion is appreciated.

Yours very truly,


Regulatory Vice President

Copy to: Mr. Jim Hurt, Director
Consumers' Utility Counsel Division
Governor's Office of Consumer Affairs
2 Martin Luther King, Jr. Drive
Plaza Level East
Atlanta, Georgia 30334

CERTIFICATE OF SERVICE

I, Bonnie Carpenter, hereby certify that on this 12th day of September, 1996, a true and accurate copy of the foregoing *Opposition To Petition for Reconsideration and Clarification* in CS Docket No. 96-46 was served by first class mail, postage prepaid, in a properly sealed envelope upon each party on the attached list.



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